



புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

விலை : ₹ 25-00

Prix : ₹ 25-00

Price : ₹ 25-00

எண்	புதுச்சேரி	செவ்வாய்க்கிழமை	2017 ஓ	டிசம்பர் மீ	26 உ
No.	52 Poudouchéry	Mardi	26	Decembre	2017 (5 Pausa 1939)
No.	Puducherry	Tuesday	26th	December	2017

பொருளடக்கம்

SOMMAIRES

CONTENTS

	பக்கம்		Page		Page
தொழில் நீதிமன்றத் தீர்ப்புகள் ..	1394	Sentence arbitral du travail ..	1394	Award of the Labour Court ..	1394
		de tribunal.			
அரசு அறிவிப்புகள் ..	1415	Notifications du Gouvernement ..	1415	Government Notifications ..	1415
ஏல அறிவிப்பு ..	1419	Vente publique ..	1419	Auction notice ..	1419
ஆபத்தான நிறுவனங்கள் ..	1420	Etablissements dangereux ..	1420	Dangerous Establishments ..	1420
சாற்றறிக்கைகள் ..	1422	Annonces ..	1422	Announcements ..	1422

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 169/Lab./AIL/T/2017,
Puducherry, dated 6th November 2017)

NOTIFICATION

Whereas, an Award in I.D (L) No. 78/2012, dated 19-09-2017 of the Labour Court, Puducherry in respect of the Industrial Dispute between the Management of M/s. Cannanore Spinning and Weaving Mills (CS & W Mill), Mahe and Thiru K. Vinodan, Mahe over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

Present :Thiru G. THANENDRAN, B.COM.,M.L.,
Presiding Officer.

Tuesday, the 19th day of September 2017

I.D. (L) No. 78/2012

K. Vinodan,
Thusharam,
Keloth House,
P.O. Peringadi,
Mahe-673 312.

.. Petitioner

Versus

The General Manager,
Cannanore Spinning and Weaving
Mills, Pallor, Mahe.

.. Respondent.

This industrial dispute coming on 31-08-2017 before me for final hearing in the presence of M.K. Suresh Kumar, Advocate, for the petitioner, Thiru Shashi, D. Nambiar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration his day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government as per the G. O. Rt. No. 108/2007/Lab. AIL/J/2009, dated 04-07-2007 for adjudicating the following:-

(i) Whether the termination of Thiru K. Vinodan by the management of M/s. Cannanore Spinning and Weaving Mill (CS & W Mill), Mahe is justified or not?

(ii) To what relief, the petitioner is entitled to?

(iii) To compute the relief, if any awarded in terms of money, if it can be so computed?

2. It is the case of the petitioner that he had been working from 1986 at the respondent establishment and he was a permanent employee and a memo., dated 01-02-2006 was issued by the management to the petitioner and subsequently he was placed under suspension pending enquiry on the basis of complaint of one Mr. Thomas Sebastian, the then Senior Technical Assistant of the Mill and the allegation against the petitioner is that the petitioner has molested the 7 year old child of Mr.Thomas Sebastian at Mill premises on 01-02-2006 at about 06.00 p.m., and the domestic enquiry was conducted against him and on the basis of the findings of the Enquiry Officer he was dismissed from service with effect from 31-07-2006 and the entire allegation is only made with an intent to throw him out from the Mill and during the petitioner long tenure of service of about 20 years of service in the Mill he has not given any room for making any complaint or allegation against him and he is an active union worker to serve at the interest of the workmen and Mr.Thomas Sebastian was used as tool by the management to attain their objective and the malicious motive of the management is seen reflected at the very beginning of the episode and the management denied sufficient opportunities to defend his part in the domestic enquiry and knowing the fact that the petitioner have no previous experience or acquaintance in the domestic enquiry as he is a layman he is not permitted to conduct the Advocate and while the domestic enquiry was conducted by the legal practitioner of the Hon'ble High Court even petitioner has requested management to allow the petitioner to avail the assistance of a legal practitioner, his request was turned out by the Enquiry Officer and the management also knowing the fact the co-worker who has been permitted to assist the enquiry to the petitioner is also an uneducated layman who has only studied up to 3rd or 4th standard and furthermore the

statement given by Mr. Thomas Sebastian, the father of the child is totally contradictory to the statement given by other witnesses of the management and the management is enemical towards petitioner on account of the trade union rivalry and the domestic enquiry conducted violating all norms of principles of natural justice and the domestic enquiry is nothing but farce and the charge sheet has been foisted against him there is no truth or merit in it and that the enquiry conducted an Advocate Kuttan was biased and partial and he acted all along the enquiry proceedings as a man of the management and he had not given sufficient opportunity to the petitioner to defend his case.

3. It is contended by the respondent stating that on 01-02-2006 at 6.00 p.m. the petitioner Vinodan has sexually harassed the 7 year old daughter of the then Senior Technical Assistant namely Mr. Thomas Sebastian at the supervisors rest room while he was served as a watchman and he has riotously and disorderly behaved with Sri. Santhosh TGB of the Mill at about 07.30 p.m., on 01-02-2006 and tried to assault him with a torch and he has also threatened and showered abuses on Sri. P.T.Valsaraj, on 02-02-2006 over Mill phone and over his mobile phone in filthy language that he will attack and do physical harm to him jointly with his friends and men and he will cause all sorts of trouble to him using his financial position and he has committed several mis-conducts under the standing order of the Mill and charge memo was issued to the petitioner as per memo., dated 01-02-2006 and he was also placed under suspension pending enquiry on the basis of a complaint filed by then Senior Technical Assistant and it was reported in the complaint that on 01-02-2006 at 6.00 p.m. when he and his wife have gone away from the mill quarters the watchman on duty, the employee, at the relevant time molested his 7 years old daughter and since the explanation submitted by the employee to the charge levelled against him was unsatisfactory, the management decided to conduct a domestic enquiry into the charges levelled against him as per memo of charges and one Advocate Kuttan was appointed to conduct the domestic enquiry and after conducting the domestic enquiry the Enquiry Officer submitted a report on 08-06-2006 finding that the employee is guilty of all charges of mis-conduct alleged against him and thereafter the management has served the copy of the enquiry report to the petitioner seeking his objection if, any in respect of the findings of the Enquiry Officer

and on receiving the memo. along with the copy of the enquiry report the employee has submitted his explanation on 20-07-2006 and after considering the explanation it was not satisfactory to the management and as the Enquiry Officer conducted the enquiry in accordance with the principles of natural justice by giving sufficient opportunities to the parties concerned and misconduct committed by the petitioner is very serious and severe and also which involves moral turpitude the management has dismissed the employee from service on 31-07-2006 in accordance with the law and that therefore, the dismissal of the employee is legal and fully justified and there is no illegality in the decision the management to dismiss the employee from service.

4. In the course of enquiry on the side of the petitioner RW.1 was examined and Ex.R1 to Ex.R5 marked and on the side of the respondent management the Enquiry Officer PW.1 was examined and Ex.M1 was marked.

5. The point for consideration is:

Whether the termination of petitioner by the respondent management is justified or not and if justified what relief the petitioner is entitled to?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. On the side of the petitioner written argument was filed and the same is carefully considered.

7. From the pleadings of both the parties and the evidence let in on either sides, it is clear that the following facts are admitted by either sides that the petitioner was working as watchman at the respondent establishment and the charge memo was given to him stating that he has molested the 7 year old child of the then Senior Technical Assistant Mr.Thomas Sebastian while he was went away along with his wife leaving his child, for which the petitioner employee has given an explanation and thereafter the management has appointed the domestic Enquiry Officer to conduct the domestic enquiry and on the foot of the enquiry report the second show cause notice was given to the petitioner and thereafter the petitioner was given explanation and thereafter the management has terminated the petitioner from service against which the petitioner has approached the Labour Conciliation Officer wherein the conciliation was failed and has referred the matter to this Tribunal for adjudicate whether the industrial dispute raised by the petitioner over his termination of service is justified or not.

8. The respondent management in order to prove the case examined the Enquiry Officer who conducted the domestic enquiry as PW.1 and marked Ex.M1. Ex.M1 is the enquiry report of the Enquiry Officer.

9. To establish his case the petitioner has examined himself as RW1 and Ex.R1 to Ex.R5 were marked. Ex.R1 is the certified copy of the Judgment passed in STR.No. 527/2006 by Judicial Magistrate at Mahe on 29-08-2006. Ex. R2 is the true copy of the complaint given by the petitioner to the General Manager, CS and W Mill on 02-01-2006. Ex. R3 is the true copy of the Gate Register maintained at the respondent Mill between 31-01-2006 to 02-02-2006. Ex.R4 is the true copy of the Log Register maintained at the respondent Mill between 28-01-2006 to 02-02-2006. Ex. R5 is the true copy of the Rounds book maintained at the respondent Mill between 31-01-2006 to 01-02-2006. Ex.R1 would reveal the fact that criminal case which was registered against the petitioner delinquent workman was charge sheeted after the investigation and subsequently this petitioner was acquitted on the ground that the matter was compromised between the carries under section 320(2) of Cr.P.C.

10. It is the main contention of the petitioner that the domestic enquiry was not conducted by Enquiry Officer fairly and following the principles of natural justice and that the petitioner was denied the assistance of legal practitioner though he has requested the Enquiry Officer to permit him to appoint an advocate to assist the enquiry and that he has not been given sufficient opportunities to putforth his case and the Enquiry Officer has conducted the enquiry in a biased manner as a man of the management.

11. On the other hand, it is contended by the respondent management that the allegation against the petitioner is very serious and severe in nature that on 01-02-2006 at 6.00 p.m. the 7 year old daughter of Mr. Thomas Sebastian, the then Senior Technical Assistant was molested by him at supervisors rest room and apart from the charge he has also been charged for the misconduct that he has committed riotous and disorderly manner and the domestic enquiry was conducted properly and following the principles of natural justice and that on the foot of the domestic enquiry report after giving due show cause notice to the petitioner to submit his comments over the domestic enquiry report and since the explanation of the petitioner is not satisfied to the management the petitioner was dismissed from service.

12. It is learnt from the records that though the petitioner has pleaded that the domestic enquiry conducted against the delinquent workman is not fair and not in accordance with the principles of natural justice and the said pleading was denied by the respondent management, the then Presiding Officer of this Tribunal has not taken the issue as a preliminary issue and to decide the same at the initial stage. Now, both the parties have let evidence in support of their pleadings and particularly the respondent management has let evidence at the first instance and the respondent witness was examined as PW1 and exhibit was marked as Ex.M1 and the delinquent workman was examined as RW.1 and Ex.R1 to Ex.R5 were marked. Since both the parties have let evidence it is just and necessary to dispose the main industrial dispute regarding industrial dispute raised by the petitioner union against the respondent management at this stage.

13. Now, the issues to be decided before this Tribunal are whether the domestic enquiry conducted by the Enquiry Officer who was appointed by the management to conduct the enquiry against the petitioner has conducted the enquiry fairly or not and whether he has given sufficient opportunities to the petitioner or not and whether the punishment is proportionate to the charges or not?

14. It is the first main contention of the petitioner delinquent workman that though he is a watchman and having no educational knowledge and the Presenting Officer is the Deputy Engineer of the respondent company and the charges levelled against the petitioner delinquent is grave in nature, the domestic Enquiry Officer has rejected the permission to the petitioner to appoint a legal practitioner to assist him in the domestic enquiry which is against the principles of natural justice and the domestic Enquiry Officer has conducted the enquiry in a biased manner.

15. As rightly pointed out by the learned Counsel for the petitioner admittedly the Enquiry Officer who conducted the domestic enquiry has not permitted the petitioner to engage an Advocate stating that the standing order does not permit the workman to engage an Advocate in the domestic enquiry and it is also an admitted fact that in the domestic enquiry the petitioner was permitted only to get assistance of co-worker and the request of the delinquent workman was rejected by the Enquiry Officer to permit him to assist by the legal practitioner. The evidence of the Enquiry Officer who was examined as PW.1 in this case runs as follows:

".....The enquiry was held first on 31-03-2006. The management was represented by Sreenivasan Deputy Engineer. I have not specified his qualification *etc.*, The disciplinary action started from the first notice issued by the management basing on the allegations. The employee submitted explanation to the charge sheet. If, no explanation is receiving the Management has to conduct enquiry. The Management has to prove the charges. Rules of procedure in CPC and Evidence Act are not applicable. The workman involved in the dispute has no previous experience in participating in disciplinary proceedings. I cannot say. In the explanation, he has stated that he not committed any offence, brief explanation is submitted. I do not know whether the workman is having experience in cross examining the witness. I have given my ruling as an Enquiry Officer on the engaging lawyer on behalf of the workman. On that day I have not made up my mind, only in the next posting only passed orders. The decision was taken not on the date when the matter was posted but the order was communicated to him. The standing order does not provide for procedure for domestic enquiry. I would not comment upon now. Only after reading the standing order I can say. No provision was brought to my notice for appointing of Advocate for defending workman. When there is no provision the principles of natural justice, Judgment of Supreme Court shall be followed. There is no such law that when livelihood of the workman is at stake he can speak through a lawyer. If, a lawyer is permitted it will promote the chance of defending the case property. I admit that if the workman is permitted to engage a lawyer the management would not be prejudiced. Except a lawyer there was no competent person to defend the workman that is why he requested for engaging the Lawyer, but the same was not allowed, I deny the suggestion. In page 82 the employee has requested that one T.K. Surendran may be allowed to assist him in proceedings. The same is after rejecting of request made by the employee for engaging a lawyer. I do not know whether Surendran has previous experience in defending disciplinary proceedings....."

From the above evidence it is clear that the contention of the Enquiry Officer that the standing order does not prohibit the delinquent workman to engage a counsel and it was silent with regard to the same. While so, it is also clear from the evidence of PW.1 the Enquiry Officer that the Presenting Officer is the Deputy Engineer of the respondent factory. While so it is stated by the Enquiry Officer regarding the educational qualification of the delinquent workman who is admittedly working as watchman that

he is not having the qualification like the Deputy Engineer and that therefore, the permission to defend the case with the assistance of the Advocate is denied by the Enquiry Officer and therefore, admittedly the petitioner's requisition was rejected by the Enquiry Officer to appoint an Advocate to defend his case while the charge levelled against the petitioner is severe in nature.

16. Furthermore, as rightly pointed out by the petitioner's counsel that admittedly the standing order absolutely was silent as to domestic enquiry and representation by parties in the domestic enquiry regarding the representation of the domestic enquiry proceedings and that there is no provision of standing order for engage an Advocate for delinquent workman for defending his case in the domestic enquiry proceedings. On this aspect the learned counsel also relied upon the Judgment reported in 1995 *ILLJ1011, 1017(Kant)*. wherein the Hon'ble High Court has observed that,

"(a) The right to be represented by a legal practitioner is not an element of principles of natural justice.

(b) A delinquent will have the right to claim to be defended by legal practitioner, where the rules or regulation permit the employee to be represented by a legal practitioner.

(c) Where the rules or regulation are silent about representation by a lawyer or vest a discretion in the disciplinary authority or the inquiry authority, to permit the employee to be represented by a legal practitioner or other agent of his choice denial of such permission a request made by the employee, would violate the principles of natural justice.

(i) If the Presenting Officer is a legal practitioner or a person legally trained or experienced or

(ii) If the charges are serious and complex nature.

(d) Where rules or regulations specifically prohibit the employee from engaging the service of a legal practitioner, such rules or regulations will be read down as vesting a discretion in the disciplinary authority to permit the employee to engage a legal practitioner, where

(i) The Presenting Officer is a legal practitioner or legally trained person, or

(ii) The charges are of a serious and complex nature if it is not so read down, the rule itself may have to be held to be invalid as violating article 14 of the constitution."

From the above observation of the Hon'ble High Court, it is very clear that absence of provision in the standing order is not at all a ground for denying the assistance of the lawyer to the delinquent workman to defend him in the domestic enquiry proceedings. But, in this case, the enquiry report itself would clear that delinquent workman was denied the permission to appoint the Counsel to assist him in the domestic enquiry.

17. The learned Counsel for the petitioner relied upon the Judgment reported in *Lord Denning, M.R., in Pett V. Greyhound Racking Association (1968:2 All.E.R. 545)*, wherein it was held as follows:

"It is not every man who has the ability to defend him on his own. He cannot bring out the points in his own favour or the weakness in the other side. He may be tongue tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it everyday. A Magistrate says to a man : "You can ask any question you like", If someone to speak for him. And who better than a lawyer who has been trained for the task? I should have thought, therefore that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He also has a right to speak by Counsel or Solicitor."

The learned Counsel for the petitioner has also relied upon the Judgment reported in *Board of Trustees of port of Bombay and Dilipkumar Raghavendranath Nadharni and others 1983 LIC Page 1 (SC)*, wherein it was held as follows:

"...In the past it could be said that there was an informal atmosphere before such a domestic Tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a Domestic Tribunal, we have moved far away from this stage. The situation is where the employer has on his pay rolls Labour Officers, Legal Advisors-Lawyers in the gabs of employees and they are appointed as Presenting-cum-Prosecuting officers and the delinquent employee pitted against such a legally trained personnel has to defend himself. Now, if, the rules prescribed of such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion

of the Enquiry Officer, whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry the delinquent employee in order to afford reasonable opportunity to defend himself should be permitted to appear through a legal practitioners. Why it is so could be explained? What is the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment done the robe of a Judge, it is held in the establishment office or a part of it, can it even be compared to the adjudication by an impartial arbitrator or a prosecutor called into one. Witnesses are generally employees of the employer who directs and enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to this uneven scale the weight of legally trained minds on behalf of the employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only partly restored of the delinquent is given the same legal assistance as the employer employs.....".

The learned Counsel for the petitioner has also relied upon the Judgment reported in *Indian Photographic Company Limited Vs. Sumithra Mohan Kumar, 1984 LIC 42*, wherein it was held as follows:

"Though Court should discourage involvement of legal practitioner in simple domestic enquiries like disciplinary enquiries for avoiding complication and delay. Yet the court cannot ignore the necessity of such representation in exceptional cases where refusal of such representation would constitute failures of the enquiry itself. Principles of natural justice demand conceding such claim. No general rule can be laid down in this respect but the issue must be decided in the light of the facts of each case. In a case the allegations pertained to commission of fraud and for Gerry on the part of the employee. If such allegations has been made in the court the employee would have a right of representation by an Advocate." .

The learned counsel for the petitioner has also relied upon the Judgment reported in *Hansila Prasad Pandey Vs. Bank of India, 1986 (1DLLN525)*, wherein it was held as follows:

"It is true that a charge sheeted employee in a departmental proceedings is not entitled to the assistance of the lawyer as a matter of right, but such assistance in the interest of natural justice should be

given where the situation demand it. In the instant case, the petitioner was asked to meet a complicated question of law which obviously was not possible for him to meet without the assistance of a lawyer. That being so the refused of such assistance amounted to violation of principles of natural justice."

The learned Counsel for the petitioner has also relied upon the Judgment reported in *K.D. Anpet Vs. State of Maharashtra, 1989 (1) CLR 244*, wherein it was held as follows:

"Where the accusations levelled against the delinquent were of such serious nature that even if the most trifling the allegation is established, the delinquent would be dismissed from service and the nature of the accusation was also complicated, difficult and likely to embarrass the delinquent in the absence of legal aid, permission to be represented by a lawyer must be given."

The learned Counsel for the petitioner has also relied upon the Judgment reported in *K.G. Shenoy Vs. Disciplinary Authority, 1995 LLR 139 (Kar.HC)*, wherein it was held as follows:

"The right to be represented by a Counsel in an enquiry cannot be claimed as a matter of right. However, in a case where the delinquent is not in a position to express himself or his livelihood is in stake or that his social or financial status are likely to be ruined or where several complicated questions are raised which the delinquent is un-able to comprehend, the question of such delinquent employee being afforded the assistance of a counsel can be considered."

From the above observations made in the citations it is clear that whenever the accusation levelled against the delinquent is of such serious nature that even if the most trifling the allegation is established, the delinquent would be dismissed from service and the nature of the accusation was also complicated and difficult and that therefore, the permission to be given to the delinquent to appoint the lawyer to assist in the enquiry and furthermore whenever it is impossible to the delinquent to meet the enquiry without the assistance of the lawyer, it is just and necessary to give permission to the delinquent employee to conduct the enquiry with the help of an Advocate. In this case, the Presenting Officer is the Deputy Engineer. While so the delinquent employee the watchman was not permitted to conduct the domestic enquiry with the assistance of lawyer and the requisition of the delinquent employee was rejected by the Enquiry Officer stating that standing order does not

permit while the charge levelled against the petitioner is grave in nature and therefore it is clear that the Enquiry Officer who conducted the domestic enquiry has not given sufficient opportunity to the delinquent petitioner workman to get assistance of senior Advocate though he is a watchman facing grave charges while the Presenting Officer was a Deputy Engineer representing the management and therefore the rejection of permission to the petitioner delinquent to assist him in the enquiry through legal practitioner is against the principles of natural justice and that therefore, the domestic Enquiry Officer has not followed the principles of natural justice in conducting the domestic enquiry.

18. Furthermore, the memo of charge was given by the respondent management to the delinquent workman on 13-02-2006, in which the charge runs as follows:

"(i) You have sexually harassed the 7 year daughter of Sri (name omitted), the then Senior Technical Assistant (presently the Assistant Spinning Manager) of the mills at about 6.00 p.m., on 01-02-2006 at the supervisors' rest room, while you were on duty as a watchman.

(ii) You have riotously and disorderly behaved with Sri Santhosh TGB 133 of the Mills at about 7.30 p.m., on 01-02-2006 and tried to assault him with a torch.

(iii) You have threatened and showered abuses on Sri. P.T. Valsaraj, Spg.303, on 02-02-2006 over mill phone and over his mobile phone in filthy language that you will attack do physical harm to him jointly with your friends and men and you will cause all sorts of trouble to him using your official position.

(iv) You have committed act subversive of discipline.

(v) You have committed acts unbecoming of a Watchman of the mills and acted in a manner in which the mills cannot any long confide in you, which would constitute misconduct under the Certified Standing order of the mills (17 (3) (J) and 17 (3) (s) in particular and Model standing orders.

From the above contention of the charge memo it is clear that the delinquent workman has been charged for misconduct of (i) sexual harassment of 7 year girl, (ii) acted in a riotous and disorderly manner, (iii) threatening and showering abuses on Sri. P.T.Valsaraj, (iv) subversive of discipline & (v) constitute misconduct under the Certified Standing order of the mills (17 (3) (J) and 17 (3) (s) in

particular and Model standing orders. However, on perusal of records it is learnt to this court that the Enquiry Officer who conducted the domestic enquiry in his final report has stated commonly that the charges leveled against the delinquent workman was proved. The final report of the Enquiry Officer in the domestic enquiry runs as follows:

"6.02. In the light of the facts discussed above I find that all the charges of misconduct alleged against the delinquent Sri. K. Vinodan, W.W.T.No.15 (under suspension) in the memo. of charges dated 13-02-2006 issued to him by the General Manager are substantiated in full."

From the above final report of the Enquiry Officer, it is clear that though the delinquent workman was charged for 5 charges, the Enquiry Officer has not dealt with each and every charges levelled against the delinquent workman. Simply the Enquiry Officer has stated in his report that the workman Vinodan committed the acts of misconduct as alleged against him. The Enquiry Officer has not stated in his domestic enquiry report that these 5 charges were proved by the management separately.

19. Furthermore, on receipt of the proceedings and findings of the Enquiry Officer, the Disciplinary Authority should forward a copy of the findings of the Enquiry Officer of the delinquent employee and advise him to submit his comments on the findings of the Enquiry Officer within a specific period of time and on receipt the delinquent employee should submit his comments and only after expiry of specific period of time given to delinquent employee to submit his comments, the Disciplinary Authority should come to his own conclusion by going through all the papers and applying his mind dispassionately and he should also record his view on the Enquiry Officer's findings in respect of each charge separately. In this case, the respondent management has stated in their counter that they have sent a memo to the delinquent workman along with the copy of the final report of the Enquiry Officer asking him to submit his comments on the enquiry report. But, no such notice is exhibited before this court to prove the same and furthermore, it is also stated by the respondent management in their counter that they have given statutory show-cause notice to the delinquent workman regarding the proposed punishment before terminating him from service. But no such notice is exhibited before this court as document on the side of the respondent management to prove their contention. Though the respondent management has stated in their counter that they have issued notice asking the delinquent workman to submit his

comments regarding the enquiry report and they have sent a second show cause notice regarding the proposed of punishment calling upon the petitioner to give explanation, they have failed to prove the same by exhibiting the above said notices before this Court.

20. Furthermore, the Disciplinary Authority should also go into the past record of the employee while awarding the punishment and when it is favorable to the employee and the misconduct committed by and approved against him is of a minor nature, the Disciplinary Authority may take a lenient view. In case of adverse past record, it should be disclosed to him in the show cause notice and he should be given an opportunity to explain the same. But, in this case no such notice was exhibited before this Court which was alleged to have been issued to the delinquent employee. After considering all the above factors, and after affording a personal hearing to the employee, the Disciplinary Authority will issue the final order reducing or confirming the punishment already proposed. But in this case the respondent management has not stated anything about his past records of the delinquent workman and even a show cause notice alleged to have been issued by the Disciplinary Authority to the delinquent workman was not exhibited before this Court and also no notice regarding the proposed punishment imposed against him was exhibited before this Court. These facts would go to show that the Disciplinary Authority has failed to follow the principles of natural justice before awarding the punishment of termination of service to the delinquent workman.

21. From the above discussions and the fact that the domestic Enquiry Officer has not followed the principles of natural justice in conducting the domestic enquiry by rejecting the requisition of the petitioner to appoint a legal practitioner to assist the domestic enquiry while charge against the petitioner is grave in nature and other circumstances that the petitioner was acquitted from the case since the petitioner as well as the complainant the victim have entered the compromise in the criminal case under section 320(2) of Cr.P.C. and the fact that the notice calling upon the petitioner delinquent workman to submit his comments on the domestic enquiry report and the second show cause notice have not been exhibited before this Court and other circumstances that even according to the respondent management the petitioner has no past records, it is just and necessary to hold that the termination of petitioner Thiru K. Vinodan by the management of M/s. Cannanore Spinning and Weaving Mill, Mahe is not justified. Since, this Court

has held that the Industrial Dispute raised by the petitioner against the respondent management regarding the dismissal of his service is justified, it is also just and necessary to decide the relief which can be given to the petitioner delinquent workman.

22. On this aspect records and documents are carefully perused. Though the respondent management has failed in conducting the domestic enquiry properly the allegation levelled against the petitioner is grave in nature that he has sexually harassed the 7 year child and committed misconduct and that therefore, the management has lost faith on the workman and that therefore, they have terminated the workman from the respondent Industry and in such circumstances, the relief of order of reinstatement cannot be ordered and is not a further the petitioner has not stated that he has not joined in any other establishment, so far he has not gainfully employed in any other establishment after his termination and therefore, he is not entitled for any backwages. Only compensation alone is a reasonable one to the petitioner delinquent workman. Further, no monetary benefits were given to him by the respondent management. Since the petitioner delinquent workman was working for more than 20 years as watchman at the respondent management he is entitled for gratuity and other monetary benefits while he was terminated from service and that therefore, considering the long tenure of service of the petitioner delinquent workman and considering the other circumstances and fact that the petitioner delinquent workman could not serve at the respondent establishment in future since the the management has lost faith on the workman, this Court has decided that the petitioner delinquent workman is not entitled for any reinstatement as claimed by him instead of that he can be granted compensation as an alternative remedy to him from the respondent management.

23. In order to fix the compensation the records and circumstances are carefully considered. The petitioner has served at the respondent establishment for about 20 years and thereafter due to the fact that the incident alleged to have been happened on 01-02-2006 at 6.00 p.m. at factory premises, the petitioner delinquent workman had not been in service from 2006 *i.e.*, for more than 11 years. Considering all other above circumstances, this Court tentatively fix ₹ 2,00,000 as compensation which is to be paid by the respondent management to the petitioner and apart from compensation the petitioner delinquent workman is entitled for all other retirement benefits as if, he is in service at this stage such as gratuity and other benefits.

24. In the result, the petition is partly allowed and the termination of the petitioner Thiru K. Vinodan by the management of M/s.Cannanore Spinning and Weaving Mill, (CS & W Mill), Mahe is not justified and an Award is passed by directing the respondent management to pay ₹ 2, 00,000 (Rupees two lakhs only) as compensation and also directed the respondent management to pay retirement benefits such as gratuity and other benefits to the said Thiru K. Vinodan as if he is in service at this stage and the claim in respect of backwages is dismissed. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 19th day of September, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.

List of petitioner's witness:

RW.1 — 24-09-2010 — Vinodan

List of petitioner's exhibits:

Ex.R1—29-08-2006 — Certified copy of the judgment passed in STR No. 527/2006 by Judicial Magistrate at Mahe.

Ex.R2—02-01-2006 — True copy of the complaint given by the petitioner to the General Manager CS & W Mill.

Ex.R3—31-01-2006 — True copy of the Gate to Register maintained at the respondent Mill.
02-02-2006

Ex.R4—28-01-2006 — True copy of the Log to Register maintained at the respondent Mill.
02-02-2006

Ex.R5—31-01-2006 — True copy of the Rounds to Book maintained at the respondent Mill.
01-02-2006

List of respondent's witness:

PW1 — 20-07-2010 — Kuttan

List of petitioner's exhibits:

Ex.M1— — Report of enquiry

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G. O. Rt. No. 178/Lab./AIL/T/2017, dated 10th July 2017)

NOTIFICATION

Whereas, an Award in I.D (L) No.19/2013, dated 30-10-2017 of the Labour Court, Puducherry in respect of the industrial dispute between V. Sampath, Labour Contractor (for M/s Larsen and Tourbo Farm Work Metal Shop) and V.K. Jesudoss, Puducherry over non-employment has been received.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

Present : Thiru G. THANENDRAN, B.COM, M.L.,
Presiding Officer,

Monday, the 30th day of October, 2017

I.D. (L) No. 19/2013

V.K.Jesudoss, s/o. Kuppan,
No.45, Mariamman Koil Street,
Kooteripattu, Tindivanam,
Villupuram District. . . Petitioner

Versus

1. V. Sampath, Labour Contractor,
(for M/s. Larsen & Toubro Farm
Work Metal Shop),
(Licence No.529/CL/A7/2010),
Sedarapet, Puducherry.
2. The Managing Director,
Larson & Toubro Limited,
Puducherry. . . Respondents.

This industrial dispute coming on 11-10-2017 before me for final hearing in the presence of Thiru R.T.Shankar, Advocate for the petitioner, Thiru B. Mohandoss, Advocate for the respondent No. 1, Thiruvalarkal M.Vaikunth, R.Vikneshraj and R.Ilamparudhi, Advocates for the respondent No. 2, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

A W A R D

1. This industrial dispute has been referred by the Government as per the G.O.Rt.No.31/AIL/LAB/J/2013, dated 28-02-2013 for adjudicating the following:-

(i) Whether the dispute raised by Thiru V.K.Jesudoss against one Thiru V. Sambath, a Contractor (for M/s. Larsen & Toubro Farm Work Metal Shop, Puducherry) over non-employment is justified or not?

(ii) If justified, what relief the workman is entitled to ?

(iii) To compute the relief if any, awarded in terms of money if, it can be so computed?

Though the Government has referred this matter to this Court to decide the industrial dispute raised by the petitioner against Thiru V. Sambath, a Contractor (for M/s. Larsen & Toubro Limited) over non-employment is justified or not, the petitioner has impleaded the 2nd respondent management in I.A.No.207/2013 which was allowed by this Court and hence, it is to be decided whether the industrial dispute raised by the petitioner over non-employment against the respondents is justified or not.

2. The averments in the claim statement of the petitioner, in brief, are as follows :

The petitioner had been in service from 15-03-2000 at the 2nd respondent establishment working as Fitter at Doka Form Metal Shop section along with permanent workers under the direct control and supervision of the 2nd respondent. He had been connected under Employment Code No.55-13433-64 of ESI Corporation by 2nd respondent and his name also registered in the ESI Corporation. He has been utilised for production department along with the permanent workers. Since, the impermanent workers have not been paid salary on par with the permanent workers even half of the amount of permanent workers was not paid to them, the petitioner has claimed for wages and conducted several agitations against the 2nd respondent with the help of his union Pattali Thozhirsangam. He has conducted agitation on 09-02-2011 along with the workers of the 2nd respondent establishment for which the 2nd respondent management has accepted to raise ₹ 70 per day and also give assurance to regularise them as permanent workers. However, on

10-08-2011 the petitioner was refused employment by the 2nd respondent management orally for which he has sent requisition on 25-11-2011 for reinstatement to the 2nd respondent management which was ended in futile and no reply was given to him and that therefore, he raised the industrial dispute on 22-12-2011 and the conciliation was failed and thereafter, the case has been referred by the Conciliation Officer to the Government and that therefore, he is entitled for order of reinstatement with continuity of service and with full back wages and other benefits.

3. The brief averments in the counter filed by the 1st respondent are as follows :

The 1st respondent stated that as per the averments made in the claim statement, the petitioner was orally terminated on 10-08-2011 and it was not punitive termination and as such the termination referred to in the claim statement is only retrenchment as contemplated under section 2(o) of the Industrial Dispute Act, 1947 and that the matters coming within the Jurisdiction of the Labour Court have been enumerated in the 2nd Schedule of the Industrial Disputes Act, 1947 and there are as many as 6 items contained in the 2nd Schedule referred to above and that the reliefs claimed in the claim statement do not find a place in the 2nd Schedule and as such it is plain as day light that the above reliefs are beyond the purview of adjudication by this Labour Court and that only the Industrial Tribunal constituted by the Government under section 7-A of the Industrial Disputes Act, 1947 has got jurisdiction to decide the claim made by the petitioner in the present claim petition and that the matters within the jurisdiction of Industrial Tribunals have been specified under items 1 to 11 and the item No.10 specified thereon is "Retrenchment of workmen" and when the validity of retrenchment or any other issue relating to retrenchment can be canvassed only before the Industrial Tribunal and hence, cannot be adjudicated by the Labour Court, the relief of reinstatement with back wages after setting aside the retrenchment is not at all possible and further stated that averments in the claim statement does not disclose any cause of action against him and prayed to dismiss the claim petition.

4. The brief averments in the counter filed by the 2nd respondent are as follows :

The 2nd respondent stated that the claim made by the petitioner is not maintainable in law or on facts and that the 1st respondent is a registered Labour Contractor under the Industrial Disputes Act and there exist a contract between the 1st respondent for doing some work and the petitioner has worked under the said contractor under Wage basis and 2nd respondent have paid only the contractual amount to the contractor and not to the petitioner at any point of time and there is not privity

of contract between the petitioner and the 2nd respondent and hence, the petitioner should get the claim only from the 1st respondent and not from the 2nd respondent and even in the conciliation proceedings the 2nd respondent have not been arrived as a party and the petitioner has not sort any prayer against the 2nd respondent in the conciliation proceedings also and the petitioner is well aware that he worked only under the 1st respondent and not under the 2nd respondent at any point of time and that can be evidenced from G.O. Rt. No.31/AIL/Lab./J/2013 issued by the Labour Department and further stated that as per the averments made in the claim statement the petitioner was orally terminated on 10-08-2011 and it was not punitive termination and as such the termination referred to in the claim statement is only retrenchment as contemplated under section 2(o) of the Industrial Disputes Act, 1947 and that the matters coming within the Jurisdiction of the Labour Court have been enumerated in the 2nd Schedule of the Industrial Disputes Act, 1947 and there are as many as 6 items contained in the 2nd Schedule referred to above and that the reliefs claimed in the claim statement do not find a place in the 2nd Schedule and as such it is plain as day light that the above reliefs are beyond the purview of adjudication by this Labour Court and that only the Industrial Tribunal constituted by the Government under section 7-A of the Industrial Disputes Act, 1947 has got jurisdiction to decide the claim made by the petitioner in the present claim petition and that the matters within the jurisdiction of Industrial Tribunals have been specified under items 1 to 11 and the item No. 10 specified thereon is "Retrenchment of workmen" and when the validity of retrenchment or any other issue relating to retrenchment can be canvassed only before the Industrial Tribunal and hence, cannot be adjudicated by the Labour Court, the relief of reinstatement with back wages after setting aside the retrenchment is not at all possible and prayed to dismiss the claim petition.

5. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.W1 to Ex.W8 were marked and on the side of the respondents RW.1 and RW.2 was examined and Ex.R1 to Ex.R3 were marked.

6. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondents over non-employment is justified or not and if justified, what is the relief entitled to the petitioner?

7. Both sides are heard. The pleadings of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. In support of his case the learned counsel for the petitioner has relied upon the Judgment reported in CDJ 1994 SC 294, CDJ 2011 MHC 759, CDJ 2011 SC 832, CDJ 2008 MHC 941 & CDJ 2001 SC 517.

8. From the pleadings of both the parties it is learnt that the main contention of the 1st respondent is that the petitioner has not been terminated from service and it is only retrenchment and hence, it can be adjudicated only before the Labour Court not before the Industrial Tribunal and that there is no cause of action. On the other hand, the 2nd respondent contends that the 1st respondent is the registered labour contractor under the Industrial Disputes Act and the contract is executed between the 1st respondent and the 2nd respondent for doing some work and the petitioner has worked under the said contractor on wage basis and the 2nd respondent has paid only the contractual amount to the contractor and not to the petitioner at any point of time and there is no privity of contract between the petitioner and the 2nd respondent and even in the conciliation proceedings the 2nd respondent has not allied as a party and the petitioner was working only under the contractor, the 1st respondent and the termination referred in the claim statement is only retrenchment as contemplated under section 2(oo) of the Industrial Disputes Act which is under the jurisdiction of Labour Court not in the Industrial Tribunal and that this Labour Court has no jurisdiction to adjudicate and to give reinstatement with back wages after setting aside the retrenchment is not at all possible.

9. It is the evidence of the PW.1 that he had been in service from 15-03-2000 at the 2nd respondent establishment and he had been working as Fitter at Doka Form Metal Shop section along with permanent workers under the direct control and supervision of the 2nd respondent and he had been connected under Employment Code No.55-13433-64 of ESI Corporation by 2nd respondent and his name also registered in the ESI Corporation and he has been utilised for Production Department along with the permanent workers and since, the impermanent workers have not been paid salary on par with the permanent workers even half of the amount of permanent workers was not paid to them, the petitioner has claimed for wages and conducted several agitations against the 2nd respondent with the help of his union Pattali Thozhirsangam and he has conducted agitation on 09-02-2011 along with the workers of the 2nd respondent establishment for which the 2nd respondent management has accepted to raise ₹ 70 per day and also give assurance to regularise them as permanent workers and however, on 10-08-2011 he was refused employment by the 2nd respondent management orally and he has sent requisition on 25-11-2011 for reinstatement to the 2nd respondent management which was ended in futile and no reply was given to him and that therefore, he raised the industrial dispute on 22-12-2011 against the 2nd respondent management over his non-employment wherein, the 2nd respondent management has refused their

relationship of employer-employee and has stated that the petitioner is a contractual labour and that therefore, the 1st respondent also has been impleaded in the said industrial dispute and though the 2nd respondent establishment has availed the service of the petitioner directly and contributed ESI and EPF as an employer now has come with the case that the petitioner is a contractual labour and there is no relationship of employer-employee and that though petitioner has served for more than 11 years at the 2nd respondent establishment when he has asked to regularise his service and for wages with the support of his union the 2nd respondent has orally refused his employment as contractual labour as to escape from the clutches of law to regularise his service as a permanent workman.

10. In order to prove the case, the petitioner has exhibited Ex.W1 to Ex.W8. Ex.W1 is the copy of the letter regarding requesting for job sent by the petitioner to the 2nd respondent management. Ex.W2 is the acknowledgment card. Ex.W3 is the copy of the letter regarding industrial dispute raised by the petitioner. The Ex.P1 to Ex.P3 would go to show that petitioner has made requisitions to the 2nd respondent establishment as an employer to him and thereafter, the petitioner has raised the industrial dispute before the Conciliation Officer. Ex.W4 is the copy of the ESIC Card of the petitioner. Ex.W5 is the copy of ESI account statement of the petitioner. The Ex.P4 and Ex.P5 would go to show that 2nd respondent establishment is the employer to the petitioner. Ex.W6 is the information furnished under RTI Act which would reveal the fact that petitioner has obtained information under RTI Act from the ESI corporation that ESI contributions were paid by the 2nd respondent in the name of the petitioner on various dates from the year 2002 to 2011 as an employer. Ex.W7 is the conciliation failure report. Ex.W8 is the notification of Government of Puducherry. These documents would go to show that the petitioner was worked under direct supervision of the 2nd respondent for the period 2002 to 2011. Further, it is noticed from Ex.P7 that allegation of the petitioner was that petitioner was terminated from service on 10-08-2011 without any reason and he has made several representation to the contractor and the Works Manager of the 2nd respondent management and further stated that he had been terminated in violation of principles of natural justice and the contractor Sampath has stated that the petitioner had never worked under him and that there is no master and servant relationship between themselves and the dispute raised against him is not maintainable and further stated that the contract work in 2nd respondent Larsen and Toubro Limited has decreased and hence, he is not in a position to reinstate the petitioner. However, admittedly, the petitioner was working under the contractor at the 2nd respondent industry.

11. On the other hand, in order to prove the case of the respondents, RW.1 & RW.2 were examined and Ex.R1 to Ex.R3 were exhibited. Ex.R1 is the copy of the letter given by the petitioner to V.Sampath, Contractor. Ex.R2 is the copy of the letter given by the petitioner to the Works Manager, Larsen & Toubro Limited. Ex.R3 is the copy of the letter given by the petitioner to V.Sampath, Contractor.

12. The first contention of the 1st respondent as well as 2nd respondent is that this Labour Court has no jurisdiction to decide the claim made by the petitioner in the present claim petition stating that the matter contains III Schedule of the Act should be decided only by the Industrial Tribunal and the validity of the retrenchment of the workmen or any other issue relating to retrenchment can be canvassed only before the Industrial Tribunal and hence, it cannot be adjudicated by the Labour Court.

13. In this case, on perusal of the reference it can be noted that the industrial dispute is raised by the petitioner over non-employment to him and not against any retrenchment and furthermore, the claim petition also does not state that the petitioner was retrenched from service and has stated that only his employment was refused by the 2nd respondent management stating that there is no connection between the 2nd respondent Larsen & Toubro Limited and the petitioner workman and that therefore, as the petitioner has not challenged the case as retrenchment and he has challenged only non-employment, the contention of the 1st and 2nd respondents that this Labour Court has no jurisdiction to deal with the said matter is not sustainable and hence, the first contention is answered in favour of the petitioner and against the respondents.

14. The another contention of the respondents is that this petitioner is not the workman of the 2nd respondent establishment and he is only a contractual labour worked under the 1st respondent who has taken contract with the 2nd respondent establishment to produce manpower. On the other hand, it is stated by the petitioner that he was working under the direct control and supervision of the 2nd respondent management as a worker and that he was permitted to work along with the permanent workers and he had been in service as an Fitter in the Doka Form Metal Shop section and he had been connected under Employment Code No. 55-13433-64 of ESI Corporation by 2nd respondent.

15. Normally, employer - employee relationship does not exist between an employer and a contractor and the servant of an independent contractor, where, however, an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that an employment relationship exists

between him and the contractor's employees. In such a situation the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Where a person is engaged through an intermediary or otherwise for getting a job done, a question may arise whether the appointment of an intermediary was merely sham and nominal or a camouflage. Where a definite plea is raised before an Industrial Tribunal or a Labour Court, the Tribunal or Court, as the case may be would be entitled to pierce the veil and arrive at a finding that the justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and employee between the principal employer and the workman. Hence, it is to be decided by this Court that whether the contractor under whom the petitioner has served is the registered contractor to supply the workers to the respondent establishment or not and whether the 2nd respondent has direct control or supervision over the petitioner while petitioner was in service at the 2nd respondent establishment.

16. On this aspect, the evidence of RW.2, the contractor is carefully considered which runs as follows :

"எனக்கு ஒப்பந்ததாரர் லைசன்ஸ் வாங்கியிருக்கிறேன். நான் L & T காண்டிராக்டராக இருக்கிறேன். எனக்கு எந்த லைசன்ஸ் இல்லை என்றும் அதனால் நான் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை என்றால் சரியல்ல. நான் ஒப்பந்ததாரர் என்று காட்டக் கூடிய ஆதாரம் எதுவும் தாக்கல் செய்யவில்லை. நான் ஒப்பந்ததாரராக என்னிடம் தொழிலாளர்கள் வேலை பார்த்ததற்கு எந்த ஆதாரத்தையும் தாக்கல் செய்யவில்லை. தொழிலாளர்களுக்கு ESI பிடித்திருக்கிறேன். ஜேசுதாஸ் என்னிடம் பணிபுரிந்ததை காட்டக்கூடிய ஆவணம் எதுவும் தாக்கல் செய்யவில்லை. மனுதாரர் அவர் என்னிடம் வேலை பார்த்ததற்கு கையெழுத்து வாங்கியிருக்கிறேன். ESI கட்டிய ஆவணங்கள் என்னிடம் உள்ளது. அதை நான் தாக்கல் செய்யவில்லை மனுதாரர் என்னிடம் வேலை பார்க்கவில்லை என்றும் வேலை பார்த்ததாக பொய் சொல்கிறேன் என்றால் சரியல்ல. நான் 2010ஆம் ஆண்டு முதல், நான் L & T-ல் வேலை செய்து வருகிறேன். மனுதாரர் 2000 வரை வேறொரு ஒப்பந்ததாரரிடம் வேலை செய்தார். பிறகுதான் என்னிடம் வந்தார். எதிர் மனுதாரருக்காக பொய் சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல. L & T தான் மனுதாரருக்கு ESI கட்டியிருப்பதாக சொன்னால் சரியல்ல. நான்தான் கட்டியிருக்கிறேன். 2000 முதல் 2013 ஆண்டு வரை மனுதாரர் எதிர்மனுதாரர் நிறுவனத்தில் பணிபுரிவது எனக்கு தெரியும். என்னிடம் 2010ல் தான் பணிபுரிந்தார் ".

The evidence of the alleged contractor RW.2 would go to show that he has not exhibited any document before this Court to prove that contract was entered between him and the 2nd respondent management and to establish that he is a licensed contractor he has not filed any contract

before this Court and RW.2 stated that he has contributed ESI to the petitioner for which he has not exhibited any document and even he does not know whether the 2nd respondent Larson & Toubro Limited has contributed ESI and PF to the petitioner.

17. Furthermore, the 2nd respondent Larson & Toubro Limited has not exhibited any alleged contract entered between the 1st respondent and 2nd respondent Larson & Toubro Limited as an exhibit and furthermore, though the 2nd respondent has stated that there is no relationship of employer and employee between the 2nd respondent Larson & Toubro Limited and the petitioner, the documents exhibited by the petitioner would evident that ESI and PF contribution were paid by the 2nd respondent Larson & Toubro Limited and furthermore, though the 2nd respondent has stated that there is no primitive of contract between the petitioner and 2nd respondent and there is no relationship of employer-employee, the ESI Identity Card issued by the 2nd respondent management to the petitioner under Ex.P4 which disclose the fact that petitioner is the employee of the 2nd respondent Larson & Toubro Limited. Further, the 2nd respondent Larson & Toubro Limited has not spoken about the said document while the 2nd respondent has denied the relationship of employer-employee between them. However, the ESI and EPF contribution in the name of petitioner was admitted by RW.2, the witness which was examined on the side of the 2nd respondent. Though they have admitted the said payment of ESI and EPF contribution they have not come forward to say for what purpose they have paid the said contributions in the name of the petitioner as an employer. Further, though the 2nd respondent Larson & Toubro Limited has denied the relationship of employer and employee between the 2nd respondent and the petitioner, the 2nd respondent management has not spoken about the above-mentioned documents who issued to the petitioner as an employer.

18. Further, the 2nd respondent Larson & Toubro Limited has failed to produce the alleged contract under which the 1st respondent was engaged before this Court and furthermore, the 2nd respondent Larson & Toubro Limited has not at all stated how many persons were employed at the 2nd respondent establishment through 1st respondent contractor and how much was paid to 1st respondent contractor for the supply of this contractual labour and other workmen. No account statement or receipt of payment made to workers is exhibited before this Court that any amount was paid to the contractor for the supply of such workmen as a contractual labour and that therefore, it is clear that to avoid providing the benefit of labour laws to the petitioner workman the 2nd

respondent has without regularising the petitioner workmen who had been in service from 2000 for about 11 years as a workman and to avoid benefits of labour laws to the workman has utilised the petitioner in the name of the 1st respondent contractor as a contract labour without adopting legal procedure for utilising contractual labours.

19. Further, it is also not established by the 2nd respondent that 1st respondent is a licensed contractor and contract was executed between the 1st respondent and 2nd respondent Larson & Toubro Limited. The evidence of RW.1, the Assistant Manager of the 2nd respondent Larson & Toubro Limited runs as follows :

"2-ம் எதிர் மனுதாரர் நிறுவனத்தில் மொத்தம் ஒப்பந்ததாரர்கள் 30 பேர் இருக்கிறார்கள். இந்த 30 ஒப்பந்ததாரர்களுக்கு கீழ் 320 பேர் ஒப்பந்த தொழிலாளர்களாக பணிபுரிகிறார்கள். ஒப்பந்ததாரரை நியமிக்கும் போது நிர்வாகத்திற்கும் ஒப்பந்ததாரர்களுக்கும் இடையே Agreement எதுவும் உள்ளதா என்றால் இல்லை. இந்த வழக்கில் சம்பந்தப்பட்ட ஒப்பந்ததாரரிடமும் நாங்கள் எந்த ஒப்பந்தமும் செய்யவில்லை என்றால் சரிதான். முதல் எதிர்மனுதாரர் இரண்டாம் எதிர்மனுதாரர் நிர்வாகத்தில் ஒப்பந்தம் செய்ய அரசாங்கத்திலிருந்து உரிமம் பெற்றுள்ளாரா என்றால் இல்லை. ஒப்பந்த தொழிலாளர் சட்டத்தில் படிவம் L பற்றி எனக்கு தெரியாது. எங்கள் நிறுவனத்தில் ஒப்பந்ததாரர்கள் உரிமம் பெற்றவர்களும் இருக்கிறார்கள் உரிமம் இல்லாதவர்களும் இருக்கிறார்கள். அவர்களின் எண்ணிக்கை எவ்வளவு என்று எனக்கு தெரியாது.... மதசாஆ 6 ESI நிறுவனம் ஜோசுதாஸ் என்பவர் 2003-ல் பணியில் சேர்ந்ததாகவும் அது முதல் அவருக்கு ESI Contribution செலுத்திவந்ததாகவும் சொல்லப்பட்டிருப்பதாக சொன்னால் சரிதான். அந்த மதசாஆ 6-ல் மனுதாரர் ஒப்பந்ததாரரிடம் பணிபுரிந்ததாக சொல்லப்படவில்லை. அவருக்கு எங்கள் நிறுவனத்திலிருந்து ESI, PF செலுத்தப்பட்டிருக்கிறது என்றால் சரிதான். மனுதாரர் எங்கள் நிறுவனத்தில் தான் பணியாற்றினார் என்றும் 1-ம் எதிர்மனுதாரரிடம் பணிபுரியவில்லை என்றால் சரியல்ல. மனுதாரர் தொழிற்நாவா சமரச அதிகாரி முன் 2-ம் எதிர்மனுதாரர் நிறுவனத்தில் வேலை கேட்டுதான் தொழிற்நாவா எழுப்பினார் என்றால் சரிதான். மனுதாரர் எங்கள் நிறுவனத்தில் வேலை செய்யவில்லை, அதனால் அதிலிருந்து எங்களை நீக்க வேண்டும் என்று கொடுத்த கடிதத்தின் அடிப்படையில்தான் ஒப்பந்ததாரரை மட்டும் எதிர்மனுதாரர் என்று காட்டி Reference அனுப்பப்பட்டது என்று சொன்னார் சரிதான்".

From the above evidence, it is clear that Assistant Manager of the 2nd respondent Larson & Toubro Limited has categorically denied that 2nd respondent establishment has not executed any contract between anybody else for supply of contractual labourers and he deposed that he does not know whether the 1st respondent has any licence to made contract with the 2nd respondent and he admitted

that petitioner was working at the 2nd respondent establishment from the year 2003 and they have contributed ESI and PF to the petitioner from 2003 and he has admitted the fact that letter was sent by the 2nd respondent to the Conciliation Officer to remove their name from the conciliation proceedings and thereafter, the conciliation failure report was sent to the Government only against the 1st respondent.

20. Though the 2nd respondent management has denied the fact that petitioner is the employee of the 2nd respondent Larson & Toubro Limited, no explanation is given by the 2nd respondent that why ESI and EPF contribution was paid and why they have not exhibited the contract executed between the 1st respondent for the supply of labourers before this Court. On the other hand, it is established by the petitioner that he had been in service at the 2nd respondent Larson & Toubro Limited as a labour and he has served under the direct control and supervision of the 2nd respondent and ESI and EPF contributions were paid by the 2nd respondent. Therefore, it is to be held that the refusal of employment to the petitioner by the 2nd respondent without following any procedure is not justified and hence, the industrial dispute raised by the petitioner against the respondents over non-employment is justified and the petitioner is entitled for the relief of reinstatement as claimed by him in the claim statement.

21. As this Court has decided that industrial dispute raised by the petitioner against the respondents over non-employment is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by him. There is no evidence that the said workman is working so far in any other industry and that there is no proof exhibited before this Court that he is working anywhere else. The respondents have not proved that the petitioner has earned income after his non-employment. However, the petitioner workman could have served at anywhere else after his non-employment. Considering the above circumstances, this Court decides that the petitioner is entitled only for 30% back wages with continuity of service and other attendant benefits.

22. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondents over non-employment is justified and Award is passed by directing the 2nd respondent management to reinstate the petitioner in service within one month from the date of this order and further directed the 2nd respondent management to pay 30% back wages from the date of termination till the date of reinstatement with continuity of service and other attendant benefits. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 30th day of October, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 24-11-2015 — V.K. Jesudas

List of petitioner's exhibits:

Ex.W1 — 25-11-2011 — Copy of the letter regarding requesting for job sent by the petitioner to the 2nd respondent management.

Ex.W2 — 26-11-2010 — Acknowledgment Card.

Ex.W3 — 22-12-2011 — Copy of the letter regarding industrial dispute raised by the petitioner.

Ex.W4 — 5513984059 — Copy of the ESIC Card of the petitioner.

Ex.W5 — 2009-2010 — Copy of ESI account statement of the petitioner.

Ex.W6 — 15-12-2011 — Information furnished under RTI Act.

Ex.W7 — 17-09-2012 — Conciliation failure report.

Ex.W8 — 28-02-2013 — Notification of Government of Puducherry.

List of respondent's witnesses:

RW.1 — 31-01-2017 — A. Nepoliyan

RW.2 — 12-06-2017 — V. Sampath

List of respondent's exhibits:

Ex.R1 — 22-12-2011 — Copy of the letter given by the petitioner to V.Sampath, Contractor.

Ex.R2 — 25-11-2011 — Copy of the letter given by the petitioner to the Works Manager, Larsen & Toubro Limited.

Ex.R3 — 16-11-2011 — Copy of the letter given by the petitioner to V.Sampath, Contractor.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 179/Lab./AIL/T/2017,
Puducherry, dated 27th November 2017)

NOTIFICATION

Whereas, the Award in I.D.(L)No.23/2013, dated 30-10-2017 of the Labour Court, Puducherry in respect of the industrial dispute between K. Durairaj, Villupuram and K. Kumar, Labour Contractor (for M/s. Larsen & Tubro Limited) Puducherry over non-employment has been received.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab/L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

S. MOUTTOULINGAM,
Under Secretary to Government
(Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

*Present : Thiru G. THANENDRAN, B.COM, M.L.,
Presiding Officer,*

Monday, the 30th day of October, 2017

I.D. (L) No. 23/2013

K. Durairaj,
S/o. Kesavan,
No. 14, Kanniyam Village,
Thazhudhali Post,
Tindivanam Taluk,
Villupuram.

.. Petitioner

Versus

1. D. Kumar, Labour Contractor,
(for M/s. Larsen & Toubro Limited),
Mylam Road, Sedarapet.
Puducherry.
 2. The Managing Director,
M/s. Larsen & Toubro Limited,
Puducherry.
- .. Respondent

This industrial dispute coming on 11-10-2017 before me for final hearing in the presence of Thiru R. T. Shankar, Advocate for the petitioner, Thiru B. Mohandoss, Advocate for the respondent No. 1, Thiruvalargal M. Vaikunth, R. Vikneshraj & R. Ilamparudhi, Advocates for the respondent No. 2, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This industrial dispute has been referred by the Government as per the G.O. Rt. No. 54/AIL/LAB/J/2013, dated 16-4-2013 for adjudicating the following:-

(i) Whether the dispute raised by Thiru K. Durairaj against Thiru D. Kumar, a Contractor (for M/s. Larsen & Toubro Limited), Puducherry over non-employment is justified or not?

(ii) If justified, what relief the workman is entitled to ?

(iii) To compute the relief if any, awarded in terms of money if, it can be so computed?

Though the Government has referred this matter to this Court to decide the industrial dispute raised by the petitioner against Thiru D. Kumar, a Contractor (for M/s. Larsen & Toubro Limited) over non-employment is justified or not, the petitioner has impleaded the 2nd respondent management in I.A. No. 100/2013 which was allowed by this Court and hence, it is to be decided whether the industrial dispute raised by the petitioner over non-employment against the respondents is justified or not.

2. *The averments in the Claim Statement of the petitioner, in brief, are as follows:-*

The petitioner stated that he had been in service at the 2nd respondent establishment at Doka Form Metal Shop section through 1st respondent contractor from 01-07-2007 and he had been working as Electrician under the contract supervision of 2nd respondent at production department along with permanent workers and he had been connected under Employment Code No. 55-13433-64 of ESI Corporation by 2nd respondent and that he had been in service under the direct control of Larsen & Toubro and the petitioner has received Rs.185/- as wages per day and further stated that he had met with an accident during the course of employment on 15-07-2009 and he sustained injuries on his left hand finger for which he had undergone plastic surgery and the Larsen & Toubro limited has submitted report to the ESI Corporation and that in the report it was mentioned that Larsen & Toubro Limited is the employer of the petitioner and further

stated that he was receiving Rs.185 as daily wages while he asked to regularize his post through his Pattali Thozhirsangam and made a demand before the management of Larsen & Toubro limited, the management without giving intimation refused employment to the petitioner on 07-11-2010 and he made a representation on 26-11-2010 to reinstate him in service and after negotiation between the management of Larsen & Toubro limited and the Pattali Thozhirsangam the petitioner was given employment to the petitioner on 21-12-2010 and the petitioner was assigned work in TLT Division in which also the petitioner has completed the work, however his salary was reduced to Rs.110 from Rs.185 by the respondent management and when it was questioned by the petitioner the respondent management has without giving any notice to the petitioner has terminated, the petitioner from service on 01-01-2011 and thereafter the petitioner has not been permitted to enter, the premises of the respondent Industry and thereafter the petitioner has submitted a letter to the respondent establishment stating his family circumstances and asked for the salary of Rs.185 per day but the respondent management has not given employment though the association has made a requisition on 01-02-2011 to the respondent management and that therefore, the petitioner has raised the industrial dispute before the Conciliation Officer and also against the 1st respondent contractor and the conciliation was failed and thereafter the case has been referred by the Conciliation Officer to the Government and that therefore, he is entitled for order of reinstatement with continuity of service and with full back wages and other benefits.

3. The brief averments in the counter filed by the 1st respondent are as follows :

The 1st respondent stated that as per the averments made in the claim statement the petitioner was orally terminated on 07-11-2010 and it was not punitive termination and as such the termination referred to in the claim statement is only retrenchment as contemplated under section 2(oo) of the Industrial Disputes Act, 1947 and that the matters coming within the Jurisdiction of the Labour Court have been enumerated in the 2nd schedule of the Industrial Disputes Act, 1947 and there are as many as 6 items contained in the 2nd schedule referred to above and that the reliefs claimed in the claim statement do not find a place in the 2nd Schedule and as such it is plain as day light that the above reliefs are beyond the purview of adjudication by this Labour Court and that only the

Industrial Tribunal constituted by the Government under section 7-A of the Industrial Disputes Act, 1947 has got jurisdiction to decide the claim made by the petitioner in the present claim petition and that the matters within the jurisdiction of Industrial Tribunals have been specified under items 1 to 11 and the item No.10 specified thereon is "Retrenchment of workmen" and when the validity of retrenchment or any other issue relating to retrenchment can be canvassed only before the Industrial Tribunal and hence cannot be adjudicated by the Labour Court, the relief of reinstatement with back wages after setting aside the retrenchment is not at all possible and further stated that averments in the claim statement does not disclose any cause of action against him and prayed to dismiss the claim petition.

4. The brief averments in the counter filed by the 2nd respondent are as follows :

The 2nd respondent stated that the claim made by the petitioner is not maintainable in law or on facts and that the 1st respondent is a registered Labour Contractor under the Industrial Dispute Act and there exist a contract between the 1st respondent for doing some work and the petitioner is worked under the said contractor under wage basis and 2nd respondent have paid only the contractual amount to the contractor and not to the petitioner at any point of time and there is not privity of contract between the petitioner and the 2nd respondent and hence, the petitioner should get the claim only from the 1st respondent and not from the 2nd respondent and even in the conciliation proceedings the 2nd respondent have not been arrived as a party and the petitioner has not sort any prayer against the 2nd respondent in the conciliation proceedings also and the petitioner is well aware that he worked only under the 1st respondent and not under the 2nd respondent at any point of time and that can be evidenced from G.O. Rt. No.54 dated 16-04-2013 issued by the Labour Department and further stated that as per the averments made in the claim statement the petitioner was orally terminated on 07-11-2010 and it was not punitive termination and as such the termination referred to in the claim statement is only retrenchment as contemplated under section 2(oo) of the Industrial Disputes Act, 1947 and that the matters coming within the Jurisdiction of the Labour Court have been enumerated in the 2nd Schedule of the Industrial Disputes Act, 1947 and there are as many as 6 items contained in the 2nd schedule referred to above and that the reliefs claimed in the claim statement do not find a place in the 2nd Schedule and as such it is plain as day light that the above reliefs are beyond the purview of

adjudication by this Labour Court and that only the Industrial Tribunal constituted by the Government under section 7-A of the Industrial Disputes Act, 1947 has got jurisdiction to decide the claim made by the petitioner in the present claim petition and that the matters within the jurisdiction of Industrial Tribunals have been specified under items 1 to 11 and the item No.10 specified thereon is "Retrenchment of workmen" and when the validity of retrenchment or any other issue relating to retrenchment can be canvassed only before the Industrial Tribunal and hence, cannot be adjudicated by the Labour Court, the relief of reinstatement with back wages after setting aside the retrenchment is not at all possible and prayed to dismiss the claim petition.

5. In the course of enquiry on the side of the petitioner WW1 was examined and Ex. W1 to Ex.W12 were marked and on the side of the respondents RW1 & RW2 was examined and Ex. R1 to Ex.R3 were marked.

6. The point for consideration is:

Whether the dispute raised by the petitioner against the respondents over non-employment is justified or not and if justified what is the relief entitled to the petitioner?

7. Both sides are heard. The pleadings of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. In support of his case the learned Counsel for the petitioner has relied upon the Judgment in CDJ 1994 SC 294, CDJ 2011 MHC 759, CDJ 2011 SC 832, CDJ 2008 MHC 941 & CDJ 2001 SC 517.

8. From the pleadings of both the parties it is learnt that the main contention of the 1st respondent is that the petitioner has not been terminated from service and it is only retrenchment and hence it can be adjudicated only before the Labour Court not before the Industrial Tribunal and that there is no cause of action. On the other hand, the 2nd respondent contends that the 1st respondent is the registered labour contractor under the Industrial Disputes Act and the contract is executed between the 1st respondent and the 2nd respondent for doing some work and the petitioner has worked under the said contractor on wage basis and the 2nd respondent has paid only the contractual amount to the contractor and not to the petitioner at any point of time and there is no privity of contract between the petitioner and the 2nd respondent and even in the conciliation proceedings, the 2nd respondent has not allied as a party and the petitioner was working only under the

contractor, the 1st respondent and the termination referred in the claim statement is only retrenchment as contemplated under section 2(oo) of the Industrial Disputes Act which is under the jurisdiction of Labour Court not in the Industrial Tribunal and that this Labour Court has no jurisdiction to adjudicate and to give reinstatement with backwages after setting aside the retrenchment is not at all possible.

9. It is the evidence of the WW1 that he had been in service at the 2nd respondent establishment through 1st respondent contractor from 01-07-2007 and he had been working as Electrician at production department along with permanent workers and he had been connected under Employment Code No.55-13433-64 of ESI Corporation by 2nd respondent and that he had been in service under the direct control of Larsen & Toubro and he has received Rs.185 as wages per day and he had met with an accident during the course of employment on 15-07-2009 and he sustained injuries on his left hand finger for which he had undergone plastic surgery and 2nd respondent Larsen & Toubro limited has submitted report to the ESI Corporation in which it was mentioned that Larsen & Toubro Limited is the employer of the petitioner and further deposed that he was receiving Rs.185/- as daily wages while he asked to regularize his post through his Pattali Thozhirsangam and made a demand before the management of Larsen & Toubro limited, the management without giving intimation refused employment to the petitioner on 07-11-2010 and he made a representation on 26-11-2010 to reinstate him in service and after negotiation between the management of Larsen & Toubro limited and the Pattali Thozhirsangam, the petitioner was given employment on 21-12-2010 and though the petitioner was assigned work in TLT Division, his salary was reduced to Rs.110 from Rs.185 by the respondent management and when it was questioned by the petitioner the respondent management has without giving any notice to the petitioner has terminated him from service on 01-01-2011 and thereafter he has not been permitted to enter the premises of the respondent Industry and thereafter, he has submitted a letter to the respondent establishment stating his family circumstances and asked for the salary of Rs.185 per day and though the association has made a requisition on 01-02-2011 to the respondent management the respondent management has not given employment and that therefore, the petitioner has raised the industrial dispute before the conciliation officer and also against the 1st respondent contractor.

10. In order to prove the case, the petitioner has exhibited Ex.W1 to Ex.W12. Ex.W1 is the Letter regarding requesting for job sent by the petitioner to the 2nd respondent management. Ex.W2 is the Acknowledgment card. Ex.W3 is the Letter regarding requesting for job to the petitioner sent by the petitioner sangam to the 2nd respondent management. Ex.W4 is the Letter regarding industrial dispute raised by the petitioner. The Ex.P1 to Ex.P4 would go to show that petitioner has made requisitions to the 2nd respondent establishment as an employer to him and thereafter, the petitioner has raised the industrial dispute before the Conciliation Officer. Ex.W5 is the copy of the ESI Corporation card of the petitioner which would reveal the fact that it was issued by the 2nd respondent establishment. Ex.W6 is the Copy of the accident report submitted by the 2nd respondent management to the ESI Corporation in which the 2nd respondent has stated that they are the employer of the petitioner. Ex.W7 is the medical leave and receipts regarding treatment undergone by the petitioner. Ex.W8 is the Information furnished under RTI Act which would reveal the fact that petitioner has obtained information under RTI Act from the ESI Corporation that ESI contributions were paid by the 2nd respondent in the name of the petitioner on various dates from the year 2007 to 2010 as an employer. Ex.W9 is the reply given by the 2nd respondent management before the Labour Officer (Conciliation). Ex.W10 is the details regarding overtime job done by the petitioner. Ex.W11 is the conciliation failure report. Ex.W12 is the notification of Government of Puducherry. These documents would go to show that the petitioner has worked under direct supervision of the 2nd respondent for the period 2007 to 2011. Further, it is noticed from Ex. P11 that allegation of the petitioner was that petitioner was reemployed and his wage was reduced from Rs.185 to Rs.110 and the contractor insisted him to approach the respondent management and he has made representation to the respondent management on 27-10-2011 and 01-02-2011 in this regard and the respondent management has refused employment to him without any reason or notice to him and that contractor is not a licensed contractor and he had not obtained any licence from the Government of Puducherry during his period of service from 01-12-2007 and hence, it is deemed that the petitioner had worked under the management of 2nd respondent for which the respondent management has stated that they have

engaged various contractors like civil works, mechanical works and electrical works and contractors engaged for the purpose of fulfilling the contractual obligations at the premises of the company and the 1st respondent is one of the contractor who has done the electrical, wiring, repairing & cable laying works, *etc.*, and the petitioner had worked under him and the employer and workman relationship existed only between the contractor and petitioner and that there is no relationship of employer and employee between the 2nd respondent and the petitioner and that he was engaged only by the contractor, the 1st respondent as a casual workman. However, admittedly, the petitioner was working under the contractor at the 2nd respondent industry.

11. On the other hand, in order to prove the case of the respondents, RW1 & RW2 were examined and Ex. R1 to Ex.R3 were exhibited. Ex. R1 is the marriage invitation card of the petitioner. Ex. R2 is the letter given by the petitioner to the Works Manager, Larsen & Toubro Limited. Ex. R3 is the letter given by the petitioner to Srinivasa Perumal, Contractor.

12. The first contention of the 1st respondent as well as 2nd respondent is that this Labour Court has no jurisdiction to decide the claim made by the petitioner in the present claim petition stating that the matter contains III Schedule of the Act should be decided only by the Industrial Tribunal and the validity of the retrenchment of the workmen or any other issue relating to retrenchment can be canvassed only before the industrial tribunal and hence, it cannot be adjudicated by the Labour Court.

13. In this case, on perusal of the reference it can be noted that the Industrial dispute is raised by the petitioner over non-employment to him and not against any retrenchment and furthermore, the claim petition also does not state that the petitioner was retrenched from service and has stated that only his employment was refused by the 2nd respondent management stating that there is no connection between the 2nd respondent establishment and the petitioner workman and that therefore, as the petitioner has not challenged the case as retrenchment and he has challenged only non-employment, the contention of the 1st and 2nd respondents that this Labour Court has no jurisdiction to deal with the said matter is not sustainable and hence, the first contention is answered in favour of the petitioner and against the respondents.

14. The another contention of the respondents is that this petitioner is not the workman of the 2nd respondent establishment and he is only a contractual labour worked under the 1st respondent who has taken contract with the 2nd respondent establishment to produce man power. On the other hand, it is stated by the petitioner that he was working under the direct control and supervision of the 2nd respondent management as a worker and that he was permitted to work along with the permanent workers and he had been in service as an electrician in the production department from July, 2007 and he had been connected under Employment Code No. 55-13433-64 of ESI Corporation by 2nd respondent and 2nd respondent management has admitted themselves as employer of the petitioner while he was met with an accident on 15-07-2009 for which the 2nd respondent management has sent a communication to the ESI corporation on 16-07-2009 stating that the 2nd respondent establishment is the employer of the petitioner.

15. Normally, employer-employee relationship does not exist between an employer and a contractor and the servant of an independent contractor, where, however, an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that an employment relationship exists between him and the contractor's employees. In such a situation the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Where a person is engaged through an intermediary or otherwise for getting a job done, a question may arise whether the appointment of an intermediary was merely sham and nominal or a camouflage. Where a definite plea is raised before an industrial tribunal or a Labour court, the Tribunal or Court, as the case may be would be entitled to pierce the veil and arrive at a finding that the justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and employee between the principal employer and the workman. Hence, it is to be decided by this Court that whether the contractor under whom the petitioner has served is the registered contractor to supply the workers to the 2nd respondent establishment or not and whether the 2nd respondent has direct control or supervision over the petitioner while petitioner was in service at the 2nd respondent establishment.

16. On this aspect, the evidence of RW1, the contractor is carefully considered which runs as follows

“நான் ஆவணங்கள் எதையும் தாக்கல் செய்யவில்லை என்றால் சரிதான். நான் எந்த ஆண்டு L&T யில் contract எடுத்தேன் என்ற ஆவணங்களை தாக்கல் செய்யவில்லை. L&T நிர்வாகத்திற்கும் எங்களுக்கும் எந்த ஒப்பந்தமும் கிடையாது. அரசாங்கத்தில் நான் contract licence எதுவும் வாங்கியது இல்லை. எங்கள் contract வேலையில் ESI Number எதுவும் தரப்படவில்லை. Provident Fund அலுவலகத்திலிருந்தும் எந்த பதிவெண்யம் கிடையாது. ஏனெனில் என்னிடம் ஒன்றிரண்டு ஆட்கள்தான் வேலை செய்கிறார்கள். என்னிடம் துரைராஜ் என்பவர் வேலை பார்க்கவில்லை என்றும் அவர் கம்பெனியில் வேலை பார்த்தார் என்றும் நான் நிர்வாகத்திற்கு ஆதரவாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல. மனுதாரருக்கு L&T நிர்வாகம்தான் PF கட்டியிருக்கிறது என்றால் அது பற்றி எனக்கு தெரியாது. நிர்வாகத்தில் retrenchment செய்தார்களா என்று தெரியாது. எனது பதிலுரையில் ஆட்குறைப்பு செய்திருக்கிறார்கள் என்று கூறியிருக்கிறேன் என்றால் சரியல்ல. நான் தினக்கூலி ஊழியர்களை வேலை செய்ய ஆட்குறைப்பு செய்வேன் என்றால் சரியல்ல. நான் உண்மையில் ஒப்பந்ததாரர் இல்லை என்றும் அரசாங்கத்தில் லைசென்ஸ் வாங்கவில்லை என்றும் அதனால் contractகாரர் இல்லை என்று சொன்னால் சரியல்ல. நான் மனுதாரருக்கு ஆதரவாக பொய்யாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல”.

The evidence of the alleged contractor RW1 would go to show that no documents is exhibited before this Court to prove that he is the contractor and has taken contract at the 2nd respondent Larson & Toubro Limited and he admitted that there is no contract between the 2nd respondent Larson & Toubro Limited to him and he has not obtained any licence from the Government of Puducherry and that he has not assigned ESI number and Provident fund number and even he does not know whether the 2nd respondent Larson & Toubro Limited has contributed ESI and PF to the petitioner.

17. Furthermore, the 2nd respondent Larson & Toubro Limited has not exhibited any alleged contract entered between the 1st respondent and 2nd respondent Larson & Toubro Limited as an exhibit and furthermore, though the 2nd respondent has stated that there is no relationship of employer and employee between the 2nd respondent Larson & Toubro Limited and the petitioner, the documents exhibited by the petitioner would evident that ESI and PF contribution were paid by the 2nd respondent Larson & Toubro Limited and furthermore, the 2nd respondent has submitted the accidental report to the ESI corporation stating that they are the principal

employer of the petitioner Durairaj who sustained injuries in the accident at the respondent establishment and furthermore, the petitioner has exhibited the ESI identity card issued by the 2nd respondent Larson & Toubro Limited as Ex.P5 which would disclose the fact that petitioner is the employee of the 2nd respondent Larson & Toubro Limited. In such circumstances though the 2nd respondent Larson & Toubro Limited has denied the relationship of employer and employee between the 2nd respondent and the petitioner, the 2nd respondent management has not spoken about the above-mentioned documents who issued to the petitioner as an employer.

18. Further, the 2nd respondent Larson & Toubro Limited has failed to produce the alleged contract under which the 1st respondent was engaged before this Court and furthermore the 2nd respondent Larson & Toubro Limited has not at all stated how many persons were employed at the 2nd respondent establishment through 1st respondent contractor and how much was paid to 1st respondent contractor for the supply of this contractual labour and other workmen. No account statement or receipt of payment made to workers is exhibited before this Court that any amount was paid to the contractor for the supply of such workmen as a contractual labour and that therefore, it is clear that to avoid providing the benefit of labour laws to the petitioner workman, the 2nd respondent has without regularizing the petitioner workmen who had been in service from 2007 for about 5 years as a workman and to avoid benefits of labour laws to the workman has utilized the petitioner in the name of the 1st respondent contractor as a contract labour without adopting legal procedure for utilizing contractual labours.

19. Further, it is also not established by the 2nd respondent that 1st respondent is a licensed contractor and contract was executed between the 1st respondent and 2nd respondent Larson & Toubro Limited. The evidence of RW2, the Assistant Manager of the 2nd respondent Larson & Toubro Limited runs as follows :

“இந்த வழக்கில் சம்பந்தப்பட்ட ஒப்பந்ததாரரிடமும் நாங்கள் எந்த ஒப்பந்தமும் செய்யவில்லை என்றால் சரிதான். முதல் எதிர்மனுதாரர் இரண்டாம் தனுதாரர் நிர்வாகத்தில் ஒப்பந்தம் செய்ய அரசாங்கத்திலிருந்து உரிமம் பெற்றுள்ளாரா என்றால் இல்லை. ஒப்பந்த தொழிலாளர் சட்டத்தில் L படிவம் பற்றி எனக்கு தெரியாது..... மதசாஆ 8 ESI நிறுவனம் துரைராஜ் என்பவர் 2007-ல் பணியில் சேர்ந்ததாகவும் அது முதல் அவருக்கு ESI contribution செலுத்தி வந்ததாகவும்

சொல்லப்பட்டிருப்பதாக சொன்னால் சரிதான். மதசாஆ 6-ல் மேற்படி துரைராஜ் என்பவருக்கு விபத்து ஏற்பட்டதாக நிர்வாகம் ESI நிறுவனத்திற்கு கொடுக்கப்பட்ட அறிவிக்கைதான். அதில் அவர் எங்கள் நிறுவனத்தில் பணிபுரிந்ததாக சொல்லப்பட்டுள்ளது. அதில் துரைராஜ் எம்ப்ளாயர் என்று காட்டப்பட்டுள்ளது என்றால் சரிதான். அந்த மதசாஆ 6 மற்றும் 8-ல் மனுதாரர் ஒப்பந்ததாரரிடம் பணிபுரிந்ததாக சொல்லப்படவில்லை. அவருக்கு எங்கள் நிறுவனத்திலிருந்து ESI, PF செலுத்தப்பட்டிருக்கிறது என்றால் சரிதான். மனுதாரர் எங்கள் நிறுவனத்தில் தான் பணியாற்றினார் என்றும் 1-ம் எதிர்மனுதாரரிடம் பணிபுரியவில்லை என்றால் சரியல்ல. மனுதாரர் தொழிற்நாவா சமரச அதிகாரி முன் 2-ம் எதிர்மனுதாரர் நிறுவனத்தில் வேலைக்கேட்டுதான் தொழிற்நாவா எழுப்பினார் என்றால் சரிதான்...”

From the above evidence, it is clear that Assistant Manager of the 2nd respondent Larson & Toubro Limited has categorically denied that 2nd respondent establishment has not made any contract between anybody else for supply of contractual labourers and it is also admitted by him that they have not obtained any permission from the Government to utilize the contractual labourers and he admitted that petitioner was working at the 2nd respondent establishment from the year 2007 and they have contributed ESI and PF to the petitioner from 2007 and that they have admitted the fact that they have submitted the accidental report to the ESI corporation as an employer and he has also admitted the fact that in the accident report the 2nd respondent has not stated that the petitioner workman is a contractual labour under the 1st respondent.

20. Though the 2nd respondent management has denied the fact that petitioner is the employee of the 2nd respondent Larson & Toubro Limited, no explanation is given by the 2nd respondent that why ESI and EPF contribution was paid and why report was submitted to the ESI Corporation as an employer and why they have not exhibited the contract entered between the 1st respondent for the supply of labourers before this Court. On the other hand, it is established by the petitioner that he had been in service at the 2nd respondent Larson & Toubro Limited as a labour and he has served under the direct control and supervision of the 2nd respondent establishment. Therefore, it is to be held that the refusal of employment to the petitioner by the 2nd respondent without following any procedure is not justified and hence, the industrial dispute raised by the petitioner against the respondents over non-employment is justified and the petitioner is entitled for the relief of reinstatement as claimed by him.

21. As this Court has decided that industrial dispute raised by the petitioner against the respondents over non-employment is justified, it is to be decided whether the petitioner is entitled for backwages as claimed by him. There is no evidence that the said workman is working so far in any other industry and that there is no proof exhibited before this Court that he is working anywhere else. The respondents have not proved that the petitioner has earned income after his non-employment. However, the petitioner workman could have served at anywhere else after his non-employment. Considering the above circumstances, this court decides that the petitioner is entitled only for 30% backwages at the rate of Rs.185/ per day with continuity of service and other attendant benefits.

22. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondents over non-employment is justified and Award is passed by directing the 2nd respondent management to reinstate the petitioner in service within one month from the date of this order and further directed the 2nd respondent management to pay 30% back wages at the rate of Rs.185/ per day from the date of termination till the date of reinstatement with continuity of service and other attendant benefits. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 30th day of October, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.

List of petitioner's witness:

WW.1 — 09-12-2015 — Durairaj

List of petitioner's exhibits:

Ex.W1 — 27-01-2011 — Letter regarding requesting for job sent by the petitioner to the 2nd respondent management.

Ex.W2 — 01-12-2010 — Acknowledgment card.

Ex.W3 — 01-02-2011 — Letter regarding requesting for job to the petitioner sent by the petitioner sangam to the 2nd respondent management.

Ex.W4 — 25-04-2011 — Letter regarding industrial dispute raised by the petitioner.

Ex.W5 — 5516072144 — Copy of the ESIC card of the petitioner.

Ex.W6 — 16-07-2009 — Copy of the Accident report submitted by the 2nd respondent management to the ESI Corporation.

Ex.W7 — 13 Nos. — Medical leave and receipts regarding treatment undergone by the petitioner.

Ex.W8 — 30-05-2011 — Information furnished under RTI Act.

Ex.W9 — 07-06-2011 — Reply given by the 2nd respondent management before the Labour Officer (Conciliation).

Ex.W10—26-04-2010 — Details regarding overtime job done by the petitioner.

Ex.W11—24-09-2010 — Conciliation failure report.

Ex.W12—16-04-2013 — Notification of Government of Puducherry.

List of respondent's witnesses:

RW1 — 21-03-2016 — Kumar

RW2 — 21-03-2016 — Nepoliyan

List of respondent's exhibits:

Ex.R1 — Marriage invitation card of the petitioner.

Ex.R2 — 27-01-2011 — Letter given by the petitioner to the Works Manager, Larsen & Toubro Limited.

Ex.R3 — 19-02-2011 — Letter given by the petitioner to Srinivasa Perumal, Contractor.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court.